

A defendant who has a direct appeal pending may not maintain a 28 U.S.C. § 2255 action, absent extraordinary circumstances. *Capaldi v. Pontesso*, 135 F.3d 1122, 1123 (6th Cir. 1998) (adopting the rule that, absent extraordinary circumstances, a district court is precluded from considering a § 2255 application during the pendency of a direct appeal).

Petitioner has presented no extraordinary circumstances which would cause the Court to entertain this motion. Accordingly, Petitioner's 28 U.S.C. § 2255 action will be **DISMISSED** without prejudice by separate order.

The Court **FINDS**, in view of the basis for the dismissal, Petitioner has failed to make a substantial showing of the denial of a constitutional right because jurists of reason would not debate the correctness of the procedural ruling disposing of this motion. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Thus, Petitioner is **DENIED** issuance of a certificate of appealability. Fed. R. App. P. 22(b).

ENTER:

/s/
CURTIS L. COLLIER
UNITED STATES DISTRICT JUDGE